

October 15, 2002

The Honorable Kathleen Sheehy  
Administrative Law Judge  
Office of Administrative Hearings  
100 Washington Square, Suite 1700  
Minneapolis, MN 55401-2138

Dear Judge Sheehy:

Below are comments from the Association of Minnesota Counties (AMC) on the amendments to the Power Plant Siting Rules (Chapter 4400) proposed by the Environmental Quality Board. AMC has concerns with one provision of the rule amendments as it relates to local authority to regulate the siting and routing of energy facilities.

#### **4400.5000 – Local Review of Proposed Facilities**

##### **Subpart 6. No Local Authority**

The proposed rule language restricts the ability of local governments to be effectively involved in the siting or routing of energy facilities. It is the contention of AMC that the rule is not supported by state statute.

The rule language is based on the EQB's interpretation of Minnesota Statutes 116C.576 that use of the term jurisdiction means regulatory jurisdiction. However, a close reading of statute will reveal a different meaning of the term jurisdiction:

116C.576 Local review of applications.

Subdivision 1. Local review. (a) Notwithstanding the requirements of sections 116C.57 and 116C.575, an applicant who seeks a site or route permit for one of the projects identified in this section shall have the option of applying to those **local units of government that have jurisdiction over the site or route** for approval to build the project. If local approval is granted, a site or route permit is not required from the board. If the applicant files an application with the board, the applicant shall be deemed to have waived its right to seek local approval of the project. (emphasis added)

This language shows the statute means the physical jurisdiction over the land and not regulatory jurisdiction. Statute does not allow limiting local government authority when the local government has jurisdiction over the land that is proposed to host a site or route. Had the Legislature intended to use the status of a local government's official controls as a condition of authority over proposed large electric power generating plants or high voltage transmission lines, the statute would have been more specific on this matter.

With this statutory review in mind, AMC would ask that this provision of the rule be deleted.

Aside from the statutory prohibition on limiting local government participation in energy facility siting and routing, the proposed rule raises additional questions. Specifically, who would decide if a local government's ordinances are adequate for "reviewing and authorizing the construction of such project"? Similarly, who would decide if a local government "has no capability of preparing an environmental assessment on the project"?

The SONAR is of concern in that it implies that a local government should adopt an ordinance specific to energy facility siting and routing, while also stating that more general authority may be acceptable to satisfying this condition. The SONAR raises the question not only of who would decide the adequacy of local ordinances and process, but also how the adequacy will be determined.

In these cases the rule language is unnecessary, as a local government that was unwilling or unable to effectively review a project has the ability to request the EQB be responsible for the project.

Again, with this discussion in mind, the rule language in subpart 6 should be removed from the rule in its entirety. However, if this is not acceptable, then the rule should be modified to address the lack of authority granted to the EQB to limit local participation in siting and routing decisions, and specify who determines whether a local government is capable of effectively participating in these decisions. As a second option to deleting this subpart from the rule, the following modification is suggested:

"In the event a local unit of government that might otherwise have jurisdiction over a proposed large electric power generating plant or high voltage transmission line has no ordinances or other provisions for reviewing and authorizing the construction of such project, as determined by the local unit of government, or has no capability of preparing an environmental assessment, as determined by the local unit of government, the matter must be brought to the EQB for review."

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Thank you for the opportunity to comment on these rules. Please feel free to contact me if you have any questions regarding the comments contained in this letter.

Sincerely,

David Weirens  
Policy Analyst